



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,673	09/05/2003	Amos Nussinovitch	85189-5100	2188

28765 7590 04/30/2008
WINSTON & STRAWN LLP
PATENT DEPARTMENT
1700 K STREET, N.W.
WASHINGTON, DC 20006

EXAMINER

NAFF, DAVID M

ART UNIT	PAPER NUMBER
----------	--------------

1657

MAIL DATE	DELIVERY MODE
-----------	---------------

04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/657,673		NUSSINOVITCH ET AL.	
	Examiner		Art Unit	
	David M. Naff		1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7,8,10-16,18-20,22-24,26-29,31,34-36,39,40,43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,7,8,10-16 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 22-24, 26-29, 31, 34-36, 39, 40, 43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1657

DETAILED ACTION

An amendment of 1/10/08 amended claims 1, 10, 23 and 43, added new claims 45-48, and canceled claims 2, 5, 9, 21, 25, 30, 32-33, 37, 38 and 44.

5 Claims in the application are 1, 7, 8, 10-16, 18-20, 22-24, 26-29, 31, 34-36, 39, 40, 43 and 45-48.

Claims drawn to the non-elected invention are rejoined with the elected invention claims drawn to the hydrocolloid carriers.

Claim Rejections - 35 USC § 112

10 The following is a quotation of the first paragraph of 35 U.S.C. 112:

15 The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 31, 34-36, 39, 40, 43 and 45-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written
20 description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

25 Support is not found in the specification for a method as required by claims 31 and 47 for preparing hydrocolloid carriers of claims 1 and 45. Claims 31 and 47 do not require steps and conditions sufficiently specific to prepare the hydrocolloid carriers of claims 1

Art Unit: 1657

and 45. Claims 31 and 47 should require steps that require the specific hydrocolloid components, bead diameter, moisture content, glycerol content, freeze drying and viability limitations that are required by claims 1 and 45.

5 Support is not found in the specification for a method of increasing viability as required by claims 36 and 48 as being an alternative to the method of claims 31 and 47, which will inherently increase viability.

10 Support is not found in the specification for "consisting essentially of" in line 1 of claim 45. The specification does not recite "consisting essentially of" as a limitation to exclude certain components or conditions.

Support is not found in the specification for nutrients and fillers controlling porosity as required in lines 8 and 9 of claim 45.

15 ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

20 The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22, 23, 31, 34-36, 39, 40, 43 and 45-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which 25 applicant regards as the invention.

In claim 22, requiring entrapped microorganisms in line 22 is confusing since this is already required in claim 1. Requiring

Art Unit: 1657

entrapped microorganisms should be deleted. Additionally, in line 5, "eventually" is confusing as to meaning and scope, and should be deleted. This rejection also applies to claim 46 for the same reasons.

5 In line 4 of claim 23, "to" should be changed to --- with --- to be clear.

Claims 31 and 47 are unclear by requiring steps of producing the carriers that are not consistent with the specific carriers of claims 1 and 45.

10 Claims 36 and 48 are unclear as to steps that increase viability that are different from the steps required to produce the carriers of claims 1 and 45.

Claim 45 is unclear as to the meaning and scope of "consisting essentially of" in line 1 since this term is not disclosed and defined
15 in the specification. The claim is further unclear how fillers and nutrients can control porosity as in lines 8 and 9 of the claim.

Conclusion

Claims 1, 7, 8, 10-16 and 18-20 are allowed.

20 22-24, 26-29, 31, 34-36, 39, 40, 43 and 45-48 are free of the prior art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1657

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after
5 the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX
10 MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

15 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1657

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M. Naff/
Primary Examiner, Art Unit
1657

DMN
15 4/28/08